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Paper No.

CLARK & ELBING LLP  
101 FEDERAL STREET  
BOSTON MA 02110

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**OCT 29 2008**

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Mikos et al.	:	
Application No. 10/775,768	:	LETTER REGARDING
Filed: February 10, 2004	:	PATENT TERM ADJUSTMENT
Atty Docket No.	:	
01997/518004	:	

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed June 16, 2008. Petitioners request that the patent term adjustment (PTA) calculation to date be reviewed for accuracy.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is 187 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 16, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is three hundred three (303) days.

The Office initially determined a patent term adjustment of three hundred three (303) days based on an adjustment for examination delay of four hundred forty-five (445) days, pursuant to 35 USC 154(b) and 37 CFR 1.703(a)(1), for issuance of an office action fourteen (14) months and 445 days after the date on which the application was filed. This amount was reduced by one hundred forty-two (142) days of applicant delay pursuant to 37 CFR 1.704(b). This reduction was calculated as follows: A delay for filing a response to the notice to file missing parts three (3) months and 27 days after the mailing of the notice to file missing parts on May 6, 2004; a delay for

filing a response to the non-final office action three (3) months and 81 days after the mailing of the non-final office action on June 29, 2006; and a delay for final a notice of appeal three (3) months after 34 days after the mailing of a final office action on March 26, 2007.

Applicant provides no specific basis for the request for review of the patent term adjustment.

A review of the record reveals that Applicant should have been assessed an additional delay of one hundred sixteen (116) days. On August 16, 2007, a notice of allowance was mailed. Applicants in response filed a Request for Continued Examination (RCE) on November 19, 2007.

37 CFR 1.704(c)(10) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of: (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) Four months.

Therefore, Applicant should have been assessed a reduction in patent term adjustment for the period of delay from November 19, 2007 (the date the RCE was filed), until March 13, 2008, the date a notice of allowance was mailed in response to the RCE, or 116 days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is one hundred eighty-seven (187) days (445 days of PTO delay, reduced by 258 (27+81+34+116) days of Applicant delay).

As the instant letter was submitted to advise the Office of an error in Applicant's favor, the \$200.00 application fee under 37 CFR 1.705(b) was not required, and has not been charged.

The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Monday  
Date: 10/27/2008

# PALM INTRANET

Time: 15:49:54

PTA Calculations for Application: 10/775768			
Application Filing Date:	02/10/2004	PTO Delay (PTO):	445
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	142
Post-Issue Petitions:	0	Total PTA (days):	187
PTO Delay Adjustment:	-116		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
86	10/27/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		116	
71	03/13/2008	MAIL NOTICE OF ALLOWANCE			
70	03/04/2008	ISSUE REVISION COMPLETED			
69	03/04/2008	DOCUMENT VERIFICATION			
68	03/03/2008	EXAMINER'S AMENDMENT COMMUNICATION			
67	03/03/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
66	03/03/2008	NOTICE OF ALLOWABILITY			
65	11/19/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
64	11/19/2007	REFERENCE CAPTURE ON IDS			
63	11/19/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
62	12/18/2007	DATE FORWARDED TO EXAMINER			
61	11/19/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
60	12/18/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
59	11/19/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
58	11/19/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
57	09/20/2007	FINISHED INITIAL DATA CAPTURE			
56	08/21/2007	EXPORT TO INITIAL DATA CAPTURE			
55	08/16/2007	MAIL NOTICE OF ALLOWANCE			
54	08/16/2007	MAIL EXAMINER'S AMENDMENT			
53	08/15/2007	ISSUE REVISION COMPLETED			
52	08/15/2007	DOCUMENT VERIFICATION			
51	08/15/2007	EXAMINER'S AMENDMENT COMMUNICATION			

50	08/15/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
49	08/15/2007	CASE DOCKETED TO EXAMINER IN GAU			
48	08/10/2007	NOTICE OF ALLOWABILITY			
47	08/06/2007	PARALEGAL TD ACCEPTED			
46	08/06/2007	PARALEGAL TD ACCEPTED			
45	07/30/2007	TERMINAL DISCLAIMER FILED			
44	07/30/2007	TERMINAL DISCLAIMER FILED			
43	07/30/2007	CORRECTED FILING RECEIPT			
42	08/06/2007	DATE FORWARDED TO EXAMINER			
41	07/30/2007	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
40	07/30/2007	NOTICE OF APPEAL FILED		34	38
39	07/30/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	03/26/2007	MAIL FINAL REJECTION (PTOL - 326)			
37	03/19/2007	FINAL REJECTION			
36	12/19/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
35	01/11/2007	DATE FORWARDED TO EXAMINER			
34	12/19/2006	RESPONSE AFTER NON-FINAL ACTION		81	31
33	12/19/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
32	10/13/2006	CASE DOCKETED TO EXAMINER IN GAU			
31	06/29/2006	MAIL NON-FINAL REJECTION	445		-1
30	06/26/2006	NON-FINAL REJECTION			
29	06/23/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
28	05/01/2006	CASE DOCKETED TO EXAMINER IN GAU			
27	04/27/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
26	06/23/2005	REFERENCE CAPTURE ON IDS			
25.7	06/23/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	06/23/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	06/14/2004	PRELIMINARY AMENDMENT			
23	02/10/2004	PRELIMINARY AMENDMENT			
22	03/20/2006	APPLICATION RETURN FROM OIPE			
21	03/21/2006	APPLICATION IS NOW COMPLETE			

20	03/20/2006	APPLICATION RETURN TO OIPE			
19	03/20/2006	APPLICATION RETURN FROM OIPE			
18	03/20/2006	APPLICATION IS NOW COMPLETE			
17	09/02/2004	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM		27	7
16	09/13/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
15	09/13/2004	APPLICATION RETURN TO OIPE			
14	09/13/2004	APPLICATION RETURN FROM OIPE			
13	09/13/2004	APPLICATION RETURN TO OIPE			
12	09/13/2004	APPLICATION DISPATCHED FROM OIPE			
11	09/13/2004	APPLICATION IS NOW COMPLETE			
9	09/02/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	06/14/2004	WORKFLOW INCOMING AMENDMENT IFW			
7	05/06/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
5	03/30/2004	CLEARED BY L&R (LARS)			
4	03/18/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	03/18/2004	CASE CLASSIFIED BY OIPE			
2	02/20/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/10/2004	INITIAL EXAM TEAM NN			

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### EXPLANATION OF PTA CALCULATION

### EXPLANATION OF PTE CALCULATION

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